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02-278

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554

CGB

SEP 30 2003

Control No. 0302789/kah

The Honorable John Breaux
United States Senate
503 Hart Senate Office Building
Washington, D.C. 20510

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Federal Communications Commission
Consumer & Governmental Affairs Bureau

Dear Senator Breaux:

Thank you for your letter on behalf of your constituent, Lewis Unglesby, regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA).

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules.

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night.

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As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

We appreciate Mr. Unglesby's comments and have placed a copy of his correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,

Fr. K Dane Snowden

Chief

Consumer & Governmental Affairs Bureau

Enclosures

JOHN BREAUX
LOUISIANA

DEMOCRATIC
CHIEF DEPUTY WHIP
COMMITTEES
COMMERCE, SCIENCE, AND
TRANSPORTATION
FINANCE
RULES AND ADMINISTRATION
SPECIAL COMMITTEE ON AGING
Ranking Member
Vice President
Chairman
SENATOR BREAUX
http://www.senate.gov/~breaux


United States Senate
WASHINGTON, DC 20510-1803

September 9, 2003

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(318) 325-3320
Hale Boggs Federal Building
501 Magazine Street, Suite 1005
New Orleans, LA 70130
(504) 589-2531
Central Louisiana
(318) 487-8445

Ms. Diane Atkinson
Congressional Liaison Specialist
Federal Communications Commission
445 12th Street, S.W., Room 8-C453
Washington, D.C. 20554
Dear Ms. Atkinson:

I have been contacted by Mr. Lewis Unglesby regarding the effect of the FCC 'Do Not Call' list on the ability to send faxes.
Please give the views and concerns of my constituent every appropriate consideration within federal guidelines. Also, please investigate the enclosed information sent to me and provide me with a report responding to the issues raised in his letter. Your reply may be forwarded to the attention of Scott Payne.
Thank you for your attention and assistance.

Sincerely,

JOHN BREAUX
United States Senator

JB/csp
Enclosure

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†LEWIS O UNGLESBY
ROBERT M MARIONNEAUX, JR.

Livonia Office
P.O. Box 657
Livonia, LA 70755

August 15, 2003

The Honorable John B. Breaux
503 Hart Senate Office Building
Washington, D.C. 20510-1803

Dear Senator Breaux

I am writing to ask for your help.

The Federal Communications Commission recently amended its regulations on sending faxed communications in a way that would severely hurt nonprofit trade and professional associations such as Louisiana Trial Lawyers Association. Part of the changes created the national "Do Not Call" list to reduce unsolicited sales faxes. However, the proposed changes also extend into the business of non-profit associations and would prevent us from sending faxed communication to our own members without first having their prior written permission.

While such changes in the fax regulations may be suitable for residential telephone numbers as the new Do Not Call registry provides, they are certainly not acceptable for *association-to-member faxes*. Our association relies on faxed communications as a major tool in communications with members.

With penalties reaching \$11,000 per unauthorized fax, this is a burden that few associations can financially endure. Furthermore, the changes are effective Aug. 25, 2003.

May I count on you to help us be heard in Washington, specifically with the FCC? I ask that the FCC halt its effort to amend the current the Telephone Consumer Protection Act to require prior written approval before sending faxed communications even when an "existing business relationship" is in place. Thank you for your help.

†Board Certified - Civil Trial Law - National Board of Trial Advocacy
†Board Certified - Criminal Trial Law - National Board of Trial Advocacy

Sincerely,

A handwritten signature in cursive script, appearing to read "Lewis".

Lewis O. Unglesby
Louisiana Trial Lawyers Association
Board of Governors